
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number EB-02-PL-086
Qwest Corporation)	
Owner of an antenna structure located west of)	NAL/Acct. No. 200232420001
Comstock, MN)	
)	FRN: 0001-6169-29
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 26, 2002

By the Resident Agent, Saint Paul Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Qwest Corporation (“Qwest”), has apparently violated Sections 17.4(a) and 17.50 of the Commission's Rules (“Rules”)¹ by failing to register an antenna structure located west of Comstock, MN and failing to maintain good visibility of the required antenna structure paint. We conclude that Qwest is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. Qwest owns an antenna supporting structure located at or near geographical coordinates 46° 39’ 32” N latitude & 096° 45’ 24” W longitude west of Comstock, MN.

3. On June 5 and June 6, 2002, an agent of the Commission’s Saint Paul Office inspected the Qwest antenna structure located at 46° 39’ 32” N latitude & 096° 45’ 24” W longitude west of Comstock, MN. The agent observed no Antenna Structure Registration (“ASR”) number posted to identify this structure. The FCC ASR database had no record that this antenna structure had been registered. The agent noted that the paint on the tower was badly faded.

III. DISCUSSION

4. Section 17.4(a) of the Rules provides that the owner of antenna structures that require notice to the Federal Aviation Administration (“FAA”) must register structures with the Commission. Qwest’s

¹ 47 C.F.R. §§ 17.4(a) and 17.50.

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antenna structure required notice to the FAA, and thus required registration with the Commission, because the structure exceeded 200 feet in height.² Qwest failed to register its antenna structure west of Comstock, MN as of June 6, 2002.

5. Section 17.50 of the Rules states that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. The agent noted that the paint was badly faded on June 5 and June 6, 2002.

6. Based on the evidence before us, we find that on June 5 and June 6, 2002, Qwest willfully³ and repeatedly⁴ violated Sections 17.4(a) and 17.50 of the Rules by failing to register its antenna structure and failing to maintain the tower paint in such condition that good visibility was achieved. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amount for failure to register an antenna structure at \$3,000 for each violation, and for failure to comply with prescribed lighting and marking at \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a thirteen thousand dollar (\$13,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Qwest is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Sections 17.4(a) and 17.50 of the Rules by failing to register its antenna structure and failing to maintain the tower paint in good condition.

² See 47 C.F.R. § 17.7(a).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated," when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, and 0.311.

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8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Qwest SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232420001 and FRN 0001-6169-29.

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. 200232420001.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and Certified Mail, Return Receipt Requested, to Qwest Corporation, 700 W. Mineral Avenue, Room CO G1.24, Littleton, Colorado 80120.

FEDERAL COMMUNICATIONS COMMISSION

F. M. Evans, P. E.
Resident Agent
Saint Paul Office

⁹ See 47 C.F.R. § 1.1914.